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RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 4th May, 1963:—

BILL NO. XII OF 1963

A bill further to amend the Employees' Provident Funds Act, 1952.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Employees' Provident Funds (Amendment) Act, 1963. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

19 OF 1963. 2. In section 2 of the Employees' Provident Funds Act, 1952 (hereinafter referred to as the principal Act),— Amendment of section 2.

(a) in clause (ff), the words, brackets and figure "sub-section (1) of" shall be omitted;

(b) for clause (ia), the following clause shall be substituted, namely:—

'(ia) "manufacture" or "manufacturing process" means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;'

Amendment
of section 5.

3. In section 5 of the principal Act, after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.

“(1B) Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters specified in Schedule II.”.

Insertion of
new sections
5A, 5B, 5C,
5D and 5E.

4. After section 5 of the principal Act, the following sections shall be inserted, namely:—

Central
Board.

“5A. (1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following persons, namely:—

(a) a Chairman to be appointed by the Central Government;

(b) not more than five persons appointed by the Central Government from amongst its officials;

(c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the Central Government;

(d) six persons representing employers of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf; and

(e) six persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employees as may be recognised by the Central Government in this behalf.

(2) The terms and conditions subject to which a member of the Central Board may be appointed and the time, place and procedure of the meetings of the Central Board shall be such as may be provided for in the Scheme.

(3) The Central Board shall administer the Fund vested in it in such manner as may be specified in the Scheme.

(4) The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme.

5B. (1) The Central Government may, after consultation ~~State Board,~~ with the Government of any State, by notification in the Official Gazette, constitute for that State a Board of Trustees (hereinafter in this Act referred to as the State Board) in such manner as may be provided for in the Scheme.

(2) A State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time.

(3) The terms and conditions subject to which a member of a State Board may be appointed and the time, place and procedure of the meetings of a State Board shall be such as may be provided for in the Scheme.

5C. Every Board of Trustees constituted under section 5A or ~~section 5B~~ shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued. Board of Trustees to be body corporate.

5D. (1) The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board. Appointment of officers.

(2) The Central Government may also appoint as many Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners and other officers whose maximum monthly salary is not less than five hundred rupees, as it may consider necessary to assist the Central Provident Fund Commissioner in the discharge of his duties.

(3) The Central Board may appoint such other officers and employees as it may consider necessary for the efficient administration of the Scheme.

(4) No appointment to the post of the Central Provident Fund Commissioner or Deputy Provident Fund Commissioner or Regional Provident Fund Commissioner or to any other post under the Central Board carrying a maximum monthly salary of not less than five hundred rupees shall be made except after consultation with the Union Public Service Commission:

Provided that no such consultation shall be necessary in regard to any such appointment—

(a) for a period not exceeding one year; or

(b) if the person to be appointed is at the time of his appointment—

(i) a member of the Indian Administrative Service, or

(ii) in the service of the Central Government or a State Government or the Central Board in a Class I or Class II post.

(5) A State Board may, with the approval of the State Government concerned, appoint such staff as it may consider necessary.

(6) The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner, Deputy Provident Fund Commissioner and Regional Provident Fund Commissioner shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the Fund.

(7) The method of recruitment, salary and allowances, discipline and other conditions of service of the other officers and employees of the Central Board shall be such as may be specified by the Central Board with the approval of the Central Government.

(8) The method of recruitment, salary and allowances, discipline and other conditions of service of officers and employees of a State Board shall be such as may be specified by that Board, with the approval of the State Government concerned.

Delegation.

5E. The Central Board may, with the prior approval of the Central Government and a State Board may, with the prior approval of the State Government concerned, delegate to its chairman or to any of its officers, subject to such conditions and limitations, if any, as it may specify, such of its powers and functions under this Act as it may deem necessary for the efficient administration of the Scheme.”.

Amendment
of section 6.

5. In section 6 of the principal Act,—

(a) the brackets and figure “(1)” and sub-section (2) and (3) shall be omitted;

(b) after the words “each of the employees”, the brackets and words “(whether employed by him directly or by or through a contractor)” shall be inserted;

(c) for the word "sub-section" wherever it occurs, the word "section" shall be substituted,

6. After section 7 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
7A.

"7A. (1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order, determine the amount due from any employer under any provision of this Act or of the Scheme and for this purpose may conduct such inquiry as he may deem necessary.

Determination
of
moneys due
from
employers.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860.

45 of 1860.

(3) No order determining the amount due from any employer shall be made under sub-section (1), unless the employer is given a reasonable opportunity of representing his case.

(4) An order made under this section shall be final and shall not be questioned in any court of law."

7. In section 8 of the principal Act, in clause (a), after the word and figures "section 15", the words, brackets and figures "or under sub-section (5) of section 17" shall be inserted.

Amendment
of section 8.
8A.

8. After section 8 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
8A.

"8A. (1) The amount of contribution (that is to say the employer's contribution as well as the employee's contribution), and any charges on the basis of such contribution for meeting the cost of administering the Fund paid or payable by an em-

Recovery of
monies by
employers
and contrac-
tors.

ployer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Explanation.—In this section, the expressions, "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.'

Amendment
of section
13.

9. In section 13 of the principal Act,—

(a) in sub-section (2)—

(i) in clause (a), after the word "employer", the words "or any contractor from whom any amount is recoverable under section 8A" shall be inserted;

(ii) in clause (b), for the word "enter", the words "and with such assistance, if any, as he may think fit, enter and search" shall be substituted;

(iii) in clause (c), after the word "employer", the words "or any contractor from whom any amount is recoverable under section 8A" shall be inserted;

(iv) for clause (d), the following clause shall be substituted, namely:—

"(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been com-

mitted by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;";

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

~~s. 48 of 1898.~~

"(2A) The provisions of the Code of Criminal Procedure, 1898 shall, so far as may be, apply to any search or seizure under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code."

10. In section 14B of the principal Act, after the word and figures "section 15", the words, brackets and figures "or sub-section (5) of section 17" shall be inserted. Amendment of section 14B.

11. In section 17 of the principal Act,—

Amendment of section 17.

(a) in sub-section (1), the *Explanation* shall be omitted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Where in respect of any person or class of persons employed in an establishment an exemption is granted under this section from the operation of all or any of the provisions of any Scheme (whether such exemption has been granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment—

(a) shall, in relation to the provident fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges, as the Central Government may direct;

(b) shall not, at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class of persons was entitled at the time of the exemption; and

(c) shall, where any such person leaves his employment and obtains re-employment in another establishment to which this Act applies, transfer within such

time as may be specified in this behalf by the Central Government, the amount of accumulations to the credit of that person in the provident fund of the establishment left by him to the credit of that person's account in the provident fund of the establishment in which he is re-employed or, as the case may be, in the Fund established under the Scheme applicable to the establishment.

(4) Any exemption granted under this section may be cancelled by the authority which granted it, by order in writing, if an employer fails to comply,—

(a) in the case of an exemption granted under sub-section (1), with any of the conditions imposed under that sub-section or with any of the provisions of sub-section (3); and

(b) in the case of an exemption granted under sub-section (2), with any of the provisions of sub-section (3).

(5) Where any exemption granted under sub-section (1) or sub-section (2) is cancelled, the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident fund of the establishment in which he is employed shall be transferred, within such time as may be specified in the Scheme, to the credit of his account in the Fund.”.

Insertion of new section 17A. 12. After section 17 of the principal Act, the following section shall be inserted, namely:—

Transfer of accounts.

“17A. (1) Where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

(2) Where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such

employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.”.

13. In Schedule II to the principal Act,—

Amendment
of Schedule
II.

(a) for the brackets, words and figures “[See section 6 (2)]”, the brackets, words, figures and letter “[See section 5(1B)]” shall be substituted;

(b) in item (2),—

(i) after the word “employees”, the brackets and words “(whether employed by him directly or by or through a contractor)” shall be inserted;

(ii) the words, brackets and figure “sub-section (1) of” shall be omitted;

(c) after item 2, the following item shall be inserted, namely:—

“2A. The manner in which employees' contributions may be recovered by contractors from employees employed by or through such contractors.”;

(d) for items 4 and 5, the following items shall be substituted, namely:—

“4. The constitution of any committee for assisting any Board of Trustees.

5. The opening of regional and other offices of any Board of Trustees.”;

(e) in item 11, after the word “employers”, the words “or contractors” shall be inserted;

(f) in item 18, after the words, “other matter”, the words “which is to be provided for in the Scheme or” shall be inserted.

14. Until the constitution of the Central Board under section 5A Transitory provision.
of the principal Act as amended by this Act, the Central Board constituted under the Employees' Provident Funds Scheme, 1952 and functioning immediately before the commencement of this Act shall be deemed to be the Central Board constituted under that section and shall continue to function as if this Act had not been passed.

STATEMENT OF OBJECTS AND REASONS

The Employees' Provident Funds Act, 1952, which provides for the institution of compulsory contributory provident fund for employees in factories and other establishments and which was initially applied to six industries, now covers 71 industries and classes of establishments and over 35 lakhs of workers. Further 5 industries and classes of establishments are being covered under the Act from the 30th April, 1963, and 3 more will be covered from the 31st May, 1963, bringing the total number of industries and classes of establishments covered to 79. This Bill seeks to remove certain difficulties experienced in the working of the Act.

2. Employees employed by or through a contractor are covered under the definition of "employee" given in the Act, but there is no specific provision in the Act making the employer responsible for complying with the provisions of the Act in relation to employees of a contractor. The Supreme Court decided in March, 1962, that the provisions made in this regard in the Employees' Provident Funds Scheme, 1952, framed under the Act, were unconstitutional and void mainly for the following reasons:—

(i) that there is no provision enabling the employer to recover the amount of contributions from the employees employed by or through the contractor; and

(ii) that there is no obligation on the contractor to pay to the employer the amounts paid by the employer on account of the employees of the contractor.

As a result of this decision, the provident fund benefits since then have been available only to the employees employed directly by the employer and not to the employees employed by or through a contractor. This situation has led to discontent among the employees employed by or through contractors, who were enjoying the provident fund benefits under the Scheme prior to March, 1962. It is, therefore, proposed to amend the Act to extend the benefit to the employees employed by or through a contractor as well and to enable the employer to recover the contributions from the contractor.

3. It is also proposed to make some other amendments, which are felt necessary and the more important of these relate to—

(i) extending the benefit of protection from attachment of provident fund to certain employees exempted from the operation of the Scheme who are at present not entitled to such protection;

- (ii) substituting for the definition of the term 'manufacture', the definition of the term 'manufacture' and 'manufacturing process' on the lines of the comprehensive definition of the term 'manufacturing process' embodied in the Factories Act, 1948;
- (iii) making detailed provisions for the constitution of a Central Board of Trustees for administering the Employees' Provident Fund and also for recruitment of certain officers of the Employees' Provident Fund Organisation by the Central Government in consultation with the Union Public Service Commission;
- (iv) empowering the Central, Deputy and Regional Provident Fund Commissioners to determine the provident fund dues and other charges recoverable from an establishment and conferring on Provident Fund Inspectors powers of search and seizure for the proper implementation of the Act;
- (v) prescribing uniform conditions for all cases of exemptions permitted under the Act from the operation of the Scheme;
- (vi) providing for the transfer and acceptance of provident fund accumulations from the Employees' Provident Fund to a recognised provident fund and *vice versa* where an employee leaves one fund and joins another.

4. The Bill seeks to give effect to the above proposals.

NEW DELHI;

GULZARILAL NANDA.

The 24th April, 1963.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill seeks to amend Schedule II to the Act in order to empower the Central Government to make provision in a Scheme framed under the Act for certain matters in relation to employees employed by or through a contractor. These matters are either of a routine nature or pertain to matters of detail. They relate to the time and manner in which contributions may be made to the Fund by employers on behalf of employees employed by or through a contractor, the manner in which the employees' contributions may be recovered by contractors from employees employed by or through such contractors, the registers and records to be maintained with respect to such employees and the returns to be furnished by contractors. Similar provisions already exist in the Schedule in respect of employees employed directly by employers. The clause also provides for the inclusion of a new provision in the Schedule enabling the constitution of any committee for assisting any Board of Trustees constituted under the Act.

2. The delegation of legislative power is of a normal character.

S. N. MUKERJEE,
Secretary.